

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AIR ALLIANCE HOUSTON,
CALIFORNIA COMMUNITIES
AGAINST TOXICS, CLEAN AIR
COUNCIL, COALITION FOR A
SAFE ENVIRONMENT,
COMMUNITY IN-POWER &
DEVELOPMENT ASSOCIATION,
DEL AMO ACTION COMMITTEE,
ENVIRONMENTAL INTEGRITY
PROJECT, LOUISIANA BUCKET
BRIGADE, SIERRA CLUB, TEXAS
ENVIRONMENTAL JUSTICE
ADVOCACY SERVICES, and UTAH
PHYSICIANS FOR A HEALTHY
ENVIRONMENT,

Petitioners,

v.

U.S. ENVIRONMENTAL
PROTECTION AGENCY and
ANDREW WHEELER, Administrator,
U.S. Environmental Protection Agency,

Respondents.

No. 20-1504

PETITION FOR REVIEW

Pursuant to Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1), Rule 15 of the Federal Rules of Appellate Procedure, and D.C. Circuit Rule 15, Air Alliance Houston, California Communities Against Toxics, Clean Air Council, Coalition For A Safe Environment, Community In-Power & Development Association, Del

Amo Action Committee, Environmental Integrity Project, Louisiana Bucket Brigade, Sierra Club, Texas Environmental Justice Advocacy Services, and Utah Physicians For A Healthy Environment (collectively, “Petitioners”) hereby petition this Court for review of the final action of Respondents U.S. Environmental Protection Agency and Administrator Andrew Wheeler, announced in a Federal Register notice published at 85 Fed. Reg. 67,665 (Oct. 26, 2020) and titled “National Emission Standards for Hazardous Air Pollutants: Petroleum Refinery Sector: Action Denying a Petition for Reconsideration.” (Attachment 1).

DATED: December 17, 2020

Respectfully submitted,

/s/ Emma C. Cheuse

Emma C. Cheuse

James S. Pew

Earthjustice

1001 G Street, NW

Ste. 1000

Washington, DC 20001

(202) 667-4500

echeuse@earthjustice.org

jpew@earthjustice.org

*Counsel for Air Alliance Houston,
California Communities Against
Toxics, Clean Air Council, Coalition
For A Safe Environment, Community
In-Power & Development Association,
Del Amo Action Committee,
Environmental Integrity Project,
Louisiana Bucket Brigade, Sierra Club,
Texas Environmental Justice Advocacy*

*Services, and Utah Physicians For A
Healthy Environment*

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AIR ALLIANCE HOUSTON,
CALIFORNIA COMMUNITIES
AGAINST TOXICS, CLEAN AIR
COUNCIL, COALITION FOR A
SAFE ENVIRONMENT,
COMMUNITY IN-POWER &
DEVELOPMENT ASSOCIATION,
DEL AMO ACTION COMMITTEE,
ENVIRONMENTAL INTEGRITY
PROJECT, LOUISIANA BUCKET
BRIGADE, SIERRA CLUB, TEXAS
ENVIRONMENTAL JUSTICE
ADVOCACY SERVICES, and UTAH
PHYSICIANS FOR A HEALTHY
ENVIRONMENT,

Petitioners,

v.

U.S. ENVIRONMENTAL
PROTECTION AGENCY and
ANDREW WHEELER, Administrator,
U.S. Environmental Protection Agency,

Respondents.

No. 20-1504

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Air Alliance Houston, California Communities Against Toxics, Clean Air Council, Coalition For A Safe Environment, Community In-Power & Development Association, Del Amo Action Committee, Environmental Integrity Project,

Louisiana Bucket Brigade, Sierra Club, Texas Environmental Justice Advocacy Services, and Utah Physicians For A Healthy Environment (collectively, “Petitioners”) make the following disclosures:

Air Alliance Houston

Non-Governmental Corporate Party to this Action: Air Alliance Houston.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party’s General Nature and Purpose: Air Alliance Houston, a corporation organized and existing under the laws of the State of Texas, is a nonprofit organization working to reduce air pollution in the Houston region to protect public health and environmental integrity through research, education, and advocacy.

California Communities Against Toxics

Non-Governmental Corporate Party to this Action: California Communities

Against Toxics (“CCAT”).

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party’s General Nature and Purpose: California Communities Against Toxics is a non-profit organization that is a project of a non-profit corporation (Del Amo

Action Committee) that is organized and existing under the laws of the State of California. It is an environmental justice network that aims to reduce exposure to pollution, to expand knowledge about the effects of toxic chemicals on human health and the environment, and to protect the most vulnerable people from harm.

Clean Air Council

Non-Governmental Corporate Party to this Action: Clean Air Council (“CAC”).

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party’s General Nature and Purpose: CAC is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. CAC is a not-for-profit organization focused on protection of public health and the environment.

Coalition For A Safe Environment

Non-Governmental Party to this Action: Coalition For A Safe Environment (“CFASE”).

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party’s General Nature and Purpose: CFASE is a not-for-profit organization based in Wilmington, California dedicated to improving the environment, public health,

public safety, and socio-economic justice through advocacy, community organizing, research, and public education.

Community In-Power and Development Association

Non-Governmental Party to this Action: Community In-Power and Development Association (“CIDA”).

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party’s General Nature and Purpose: CIDA is a nonprofit organization that empowers and assists residents of the low-income Port Arthur, Texas communities to promote and advocate for socially responsible industrial operations and the reduction of pollution, including toxic air releases.

Del Amo Action Committee

Non-Governmental Party to this Action: Del Amo Action Committee.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party’s General Nature and Purpose: Del Amo Action Committee is a not-for-profit organization based in Torrance, California whose mission is to develop and support policy changes and promote environmental justice to create a healthy and safe community.

Environmental Integrity Project

Non-Governmental Corporate Party to this Action: Environmental Integrity Project (“EIP”).

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party’s General Nature and Purpose: EIP, a corporation organized and existing under the laws of the District of Columbia, is a national nonprofit organization that advocates for more effective enforcement of environmental laws.

Louisiana Bucket Brigade

Non-Governmental Party to this Action: Louisiana Bucket Brigade (“LABB”).

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party’s General Nature and Purpose: The Louisiana Bucket Brigade is a non-profit environmental health and justice organization organized and existing under the laws of the state of Louisiana. LABB works with communities that neighbor Louisiana’s oil refineries and chemical plants and uses grassroots action to create an informed, healthy society with a culture that holds the petrochemical industry and government accountable for the true costs of pollution to create a healthy,

prosperous, pollution-free, and just state where people and the environment are valued over profit.

Sierra Club

Non-Governmental Corporate Party to this Action: Sierra Club.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Sierra Club, a corporation organized and existing under the laws of the State of California, is a national nonprofit organization dedicated to the protection and enjoyment of the environment.

Texas Environmental Justice Advocacy Services

Non-Governmental Party to this Action: Texas Environmental Justice Advocacy Services ("TEJAS").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: TEJAS is a non-profit corporation organized and existing under the laws of the state of Texas. TEJAS promotes environmental protection through education, policy development, community awareness, and legal action to ensure that everyone, regardless of race or income, is entitled to live in a clean environment.

Utah Physicians for a Healthy Environment

Non-Governmental Party to this Action: Utah Physicians for a Healthy Environment (“UPHE”).

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party’s General Nature and Purpose: Utah Physicians for a Healthy Environment is a not-for-profit civic organization of health care professionals, including physicians, biologists, toxicologists, engineers, air quality specialists and members of the public concerned about pollution. Utah Physicians for a Healthy Environment is dedicated to protecting the health and well-being of the citizens of Utah by promoting science-based education and interventions that result in progressive, measurable improvements to the environment.

DATED: December 17, 2020

Respectfully submitted,

/s/ Emma C. Cheuse

Emma C. Cheuse

James S. Pew

Earthjustice

1001 G Street, NW

Ste. 1000

Washington, DC 20001

(202) 667-4500

echeuse@earthjustice.org

jpew@earthjustice.org

*Counsel for Air Alliance Houston,
California Communities Against*

Toxics, Clean Air Council, Coalition For A Safe Environment, Community In-Power & Development Association, Del Amo Action Committee, Environmental Integrity Project, Louisiana Bucket Brigade, Sierra Club, Texas Environmental Justice Advocacy Services, and Utah Physicians For A Healthy Environment

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing **Petition for Review** and **Rule 26.1 Disclosure Statement** on Respondents by sending a copy via First Class Mail to each of the following addresses on this 17th day of December, 2020.

Andrew Wheeler, Administrator
Office of the Administrator (1101A)
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Correspondence Control Unit
Office of General Counsel (2311)
United States Environmental Protection Agency
William Jefferson Clinton Federal Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

/s/ Emma C. Cheuse
Emma C. Cheuse

Attachment 1

§ 81.349 West Virginia.

* * * * *

WEST VIRGINIA—2010 SULFUR DIOXIDE NAAQS
[Primary]

Designated area ^{1 3}	Designation	
	Date ²	Type
Marshall, WV: Marshall County (part) Area consisting of Clay Tax District, Franklin Tax District, and Washington Tax District.	11/25/2020	Attainment.

¹ Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

² This date is April 9, 2018, unless otherwise noted.

³ Mineral County will be designated by December 31, 2020.

* * * * *

[FR Doc. 2020-21757 Filed 10-23-20; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2010-0682; FRL-10014-47-OAR]

National Emission Standards for Hazardous Air Pollutants: Petroleum Refinery Sector: Action Denying a Petition for Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition for reconsideration.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is providing notice that it has responded to a petition for reconsideration of a final rule published in the **Federal Register** on February 4, 2020. The rule promulgated amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP): Petroleum Refinery Sector based on the residual risk and technology review (RTR) conducted for the Petroleum Refinery source category. On April 6, 2020, the EPA received a petition for reconsideration on five issues related to the February 4, 2020, final rule. On September 3, 2020, the Administrator notified the petitioner by letter that the EPA was denying reconsideration. The basis for the denial is set out fully in the letter sent to the petitioner, and this letter is available in the rulemaking docket.

DATES: This rule is effective on October 26, 2020.

FOR FURTHER INFORMATION CONTACT: For questions about this action, contact Mr.

Andrew Bouchard, Sector Policies and Programs Division (E143-01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-4036; and email address: bouchard.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. How can I get copies of this document and other related information?

This **Federal Register** document, the petition for reconsideration, and the letter denying the petition for reconsideration are available in the docket the EPA established for the Petroleum Refining sector under Docket ID No. EPA-HQ-OAR-2010-0682. The petition for reconsideration is titled, *April 6, 2020 Petition for Reconsideration from EarthJustice*, which is available in Docket ID No. EPA-HQ-OAR-2010-0682. The document for the EPA's response letter denying the petition for reconsideration is titled, *EPA's Response to the April 6, 2020 Petition for Reconsideration from EarthJustice*, which is also available in Docket ID No. EPA-HQ-OAR-2010-0682. All documents in the docket are listed on the <http://www.regulations.gov/> website. Although listed in the index, some information is not publicly available (*i.e.*, confidential business information or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov/> or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Ave. NW, Washington, DC. The Public

Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the EPA Docket Center is (202) 566-1742. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>. The amended Petroleum Refinery Sector NESHAP was published in the **Federal Register** on February 4, 2020, at 85 FR 6064.

II. Judicial Review

Section 307(b)(1) of the Clean Air Act (CAA) specifies which Federal Courts of Appeal have venue over petitions for review of final EPA actions. This section provides, in part, that "a petition for review of action of the Administrator in promulgating . . . any emission standard or requirement under section [112] of [the CAA]," or any other "nationally applicable" final action, "may be filed only in the United States Court of Appeals for the District of Columbia."

The EPA has determined that its denial of the petition for reconsideration is nationally applicable for purposes of CAA section 307(b)(1) because the actions directly affect the Petroleum Refinery Sector NESHAP, which are nationally applicable CAA section 112 standards. Thus, any petitions for review of the EPA's decision denying the petitioner's request for reconsideration must be filed in the

United States Court of Appeals for the District of Columbia Circuit by December 28, 2020.

III. Description of Action

On February 4, 2020, the EPA promulgated a final rule addressing a petition for reconsideration that was filed in response to a rule issued in December 2015,¹ which amended the Petroleum Refinery Sector NESHAP based on the RTR conducted for the Petroleum Refinery source category. 85 FR 6064. Following promulgation of the final rule, on April 6, 2020, the Administrator received a petition for reconsideration of certain provisions of the final rule pursuant to CAA section 307(d)(7)(B). The petition for reconsideration was filed by Earthjustice on behalf of Air Alliance Houston, California Communities Against Toxics, Clean Air Council, Coalition for a Safe Environment, Community In-Power and Development Association, Del Amo Action Committee, Environmental Integrity Project, Louisiana Bucket Brigade, Sierra Club, Texas Environmental Justice Advocacy Services, and Utah Physicians for a Healthy Environment. The petition for reconsideration requests that the EPA reconsider five issues in the February 4, 2020, final rule: (1) The EPA's rationale that the pressure relief device (PRD) standards and emergency flaring standards are continuous; (2) the EPA's rationale for the PRD standards under CAA sections 112(d)(2) and (3); (3) the EPA's rationale for separate work practice standards for flares operating above the smokeless capacity; (4) the EPA's rationale for risk acceptability and risk determination; and (5) the EPA's analysis and rationale in its assessment of acute risk.

CAA section 307(d)(7)(B) requires the EPA to convene a proceeding for reconsideration of a rule if a party raising an objection to the rule "can demonstrate to the Administrator that it was impracticable to raise such objection within [the public comment period] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." The requirement to convene a proceeding to reconsider a rule is, thus, based on the petitioner demonstrating to the EPA both: (1) That it was impracticable to raise the objection during the comment period, or that the grounds for such objection arose after the comment period, but within

the time specified for judicial review (i.e., within 60 days after publication of the final rulemaking notice in the **Federal Register**, see CAA section 307(b)(1)); and (2) that the objection is of central relevance to the outcome of the rule.

The EPA carefully reviewed the petition for reconsideration and evaluated all five issues raised to determine if they meet the CAA section 307(d)(7)(B) criteria for reconsideration. In a separate letter to the petitioner, the EPA Administrator denied the petition for reconsideration. The letter articulates in detail the rationale for the EPA's final responses and is available in the docket for this action.

Andrew Wheeler,
Administrator.

[FR Doc. 2020-23491 Filed 10-23-20; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

43 CFR Part 51

[Docket No. DOI-2020-0001; 201D0102DM, DS6CS00000, DLSN00000.000000, DX6CS25]

RIN 1093-AA27

Procedures for Issuing Guidance Documents

AGENCY: Office of the Secretary, Interior.
ACTION: Interim final rule; request for comments.

SUMMARY: We, the Department of the Interior (Department), through this interim final rule (IFR), revise our rulemaking procedures to implement an Executive order (E.O.) entitled "Promoting the Rule of Law Through Improved Agency Guidance Documents." The E.O. requires Federal Agencies to finalize regulations or amend existing regulations to establish processes and procedures for issuing guidance documents and to establish exceptions for categories of guidance documents.

DATES: This rule is effective October 26, 2020. Comments will be accepted until December 28, 2020.

ADDRESSES: You may submit comments by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. DOI-2020-0001. Please note that if you are using the Federal eRulemaking Portal, the deadline for submitting electronic comments is 11:59 Eastern Standard Time on the comment due date.

• *Mail:* Address comment to Public Comments Processing, Attn: Docket No. DOI-2020-0001; Department of the Interior; MS: 7328; 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

Bivan Patnaik, Deputy Director of Regulatory Affairs, Office of the Executive Secretariat and Regulatory Affairs, by phone at 202-208-3181 or via the Federal Relay Service at 800-877-8339, or via email account guidance_document@ios.doi.gov.

SUPPLEMENTARY INFORMATION:

Background Information

E.O. 13891, entitled "Promoting the Rule of Law Through Improved Agency Guidance Documents," which published in the **Federal Register** on October 15, 2019 (84 FR 55235), is intended to improve the guidance document development process while maintaining an open and fair regulatory process for the public. On October 31, 2019, the Office of Management and Budget (OMB) issued a "Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions" (M-20-02).¹ One of E.O. 13891's requirements is that Federal Agencies promulgate final regulations or amend existing regulations that set forth processes and procedures for issuing guidance documents.² The purpose of this IFR is to codify these processes and procedures for issuing guidance documents as well as to allow the public to comment on the rule. The Department is amending its regulations under an IFR and will forgo issuing a proposed rule. The IFR will take effect on the date specified above in **DATES**, with public comment to conclude as set forth in **DATES**. Based on public comments received, the interim rule may be revised. The final rule will contain responses to comments received on the IFR, state the final decision, and provide the justification for that decision.

Discussion of the Interim Final Rule

This IFR creates a new part 51 in title 43 of the Code of Federal Regulations (CFR), which concerns Public Lands and the Department of the Interior. This rule promulgates the Department's procedural requirements governing the development, review, and clearance of guidance documents; the processes for

¹ See Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions.

² See section 4(a) of Executive Order 13891.

¹ The December 1, 2015, rule can be found in the **Federal Register** at 80 FR 75178.